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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 MICHAEL JOHN SANTOS-WALTERS,

No. C 07-04090 SBA (PR)

10 Plaintiff,

ORDER OF DISMISSAL

11 v.

12 DR. LINDA DIAZ, et al.,

13 Defendants.
14 _____/

15 On October 21, 2008, the Court issued an Order of Dismissal with Leave to Amend and gave
16 Plaintiff thirty days from the date of the Order to file an amended complaint providing factual and
17 legal bases for his claims. Plaintiff was warned that a failure to timely file an amended complaint
18 would result in dismissal without prejudice for failure to exhaust available administrative remedies.

19 The time for Plaintiff to file his amended complaint has passed, and no amended complaint
20 has been filed.

21 Accordingly, IT IS HEREBY ORDERED that the complaint in the above-captioned action is
22 DISMISSED without prejudice for failure to exhaust available administrative remedies. The Court
23 has rendered its final decision on this matter; therefore, this Order TERMINATES Plaintiff's case.
24 The Clerk of the Court shall terminate all pending motions and close the file.

25 When and if Plaintiff is prepared to pursue his claims, he may file a new civil rights action.
26 The limitations period to file a § 1983 action in California is two years, but it is tolled for up to two
27 years during a continuous period of incarceration. See Silva v. Crain, 169 F.3d 608, 610 (9th Cir.
28 1999) (holding, pursuant to Cal. Civ. Proc. Code § 340(3), that the limitations period for filing a

§ 1983 action in California is one year); S.B. 688 (amending Cal. Civ. Proc. Code § 340(3) and adding § 335.1 to establish two-year residual limitations period for personal injury actions); Cal. Civ. Proc. Code § 352.1(a) (providing for an additional two years of tolling during a period of continual imprisonment).

IT IS SO ORDERED.

DATED: 12/8/08


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL JOHN SANTOS-WALTERS,

Plaintiff,

v.

DR. DIAZ et al,

Defendant.

Case Number: CV07-04090 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael John Santos-Walters K20095
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: December 8, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk